

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Pharaoh El-Forever Left-i Amen El,

Case No. 23-cv-0428 (PAM/DLM)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

Social Security Administration,

Respondent.

This case is before the Court on Petitioner Pharaoh El-Forever Left-i Amen El's nonpayment of his initial partial filing fee for his Petition for Writ of Mandamus. (Doc. 1.) The case has been referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1. For the reasons that follow, the Court recommends that this action be dismissed without prejudice¹ and his pending Applications to Proceed in District Court without Prepaying Fees or Costs (Docs. 3–4) be denied as moot.

In an Order dated April 3, 2023, the Court directed Mr. Amen El to pay an initial partial filing fee of \$32.86, consistent with 28 U.S.C. § 1915(b). (Doc. 5.) Mr. Amen El was at first given 30 days to pay the initial partial filing fee, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute, *see*

¹ The Court notes that, per Mr. Amen El's May 22, 2023 Letter (Doc. 9), he may intend to bring this claim under 42 U.S.C. § 1983, and this Court's recommendation of dismissal without prejudice does not preclude him from taking such an action.

Fed. R. Civ. P. 41(b), but that deadline was later extended to June 1, 2023, after he requested an extension, (*see* Docs. 6, 8).

That extended deadline has now passed, and Mr. Amen El has not yet paid the required initial partial filing fee for this matter. Accordingly, this Court now recommends, in accordance with the prior Orders entered in this matter, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”) (citing Fed. R. Civ. P. 41(b)).

RECOMMENDATION

Based upon the above, and on all the files, records, and proceedings in this case, **IT IS RECOMMENDED** that:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute;
2. Petitioner’s First Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 3) be **DENIED AS MOOT**; and
3. Petitioner’s Second Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 4) be **DENIED AS MOOT**.

Dated: June 12, 2023

s/Douglas L. Micko
DOUGLAS L. MICKO
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “[a] party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served with a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).